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In re Application of	:	
ZEFFLER, et al.	:	
Application No.: 09/462,337	:	DECISION ON PETITION
PCT No.: PCT/EP98/02737	:	
Int. Filing Date: 11 May 1998	:	UNDER 37 CFR 1.181
Priority Date: 15 July 1997	:	
Attorney Docket No.: 2345/110	:	
For: METHOD FOR TRANSMITTING	:	
SIGNALING AND CONTROL	:	
INFORMATION FOR WAVELENGTH	:	
DIVISION MULTIPLEX NETWORKS	:	

This is a decision on applicant's, "Petition to Withdraw Holding of Abandonment Due to Patent Office Error" filed 14 June 2001.

### **BACKGROUND**

On 11 May 1998, applicant filed international application PCT/EP98/02737, which claimed priority of an earlier application filed 15 July 1997. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 28 January 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 15 January 2000.

On 07 January 2000, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a translation of the international application into English; a Preliminary Amendment; an Information Disclosure Statement; a Preliminary Examination Report and an International Search Report. An executed oath or declaration as required by 35 U.S.C. 371 (c)(4) was not filed.

On 01 March 2000, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) and NOTIFICATION OF A DEFECTIVE OATH OR DECLARATION (Form PCT/DO/EO/917) informing applicant of the need to provide a signed oath or declaration of the inventors, in compliance with 37 CFR

1.497(a) and (b), identifying the application by the International application number and international filing date and provide payment of the \$130.00 surcharge for providing an oath or declaration later than thirty months from the priority date.

On 23 May 2001, applicant was mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) informing applicant that applicant had failed to respond to the NOTIFICATION OF MISSING REQUIREMENTS mailed 01 March 2000 within the time period set therein and that above-identified application was abandoned as to the United States.

On 14 June 2001, applicant responded with the present petition accompanied by an executed declaration, a copy of a cover letter dated 17 April 2000 responding to a notice of missing requirements, a copy of the NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) and a return postcard receipt with a 17 April 2000 USPTO date stamp.

### DISCUSSION

The evidence filed with the petition, namely the date stamped postcard receipt is convincing that a response including an executed declaration and payment of fees was filed on 17 April 2000 in the present petition. Thus, it is appropriate to withdraw the holding of abandonment.

Applicant is advised that while applicant has shown that a timely response was filed, the submitted declaration contains two "Page 2 of 2." This suggests that the enclosed declaration was constructed from numerous complete declarations or that the inventors forwarded to counsel only the signatures pages of the declaration. Either alternative renders the submitted declaration defective under 37 CFR 1.497. While each inventor need not execute the same oath or declaration, where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration. (See MPEP 201.03 B. Oath or Declaration.)

### CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is **GRANTED**.

The NOTIFICATION OF ABANDONMENT mailed on 23 May 2001 is hereby **VACATED**.

Applicant is afforded **TWO MONTHS** from the mail date of this decision to file an oath or declaration in compliance with 37 CFR 1.497 (a) and (b). Failure to file a compliant oath or declaration within the time period provided will result in **ABANDONMENT** of the above-identified application.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.



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